5-2011

Handbook of Comparative Criminal Law [Book review]

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DOI: https://doi.org/10.2202/1932-0205.1341

Published in Asian Journal of Comparative Law, 2011 May, Vol 6, Issue 1, Article No. 6, pp. 1 - 5.
http://doi.org/10.2202/1932-0205.1341

The Handbook of Comparative Criminal Law. Edited by Kevin J Heller & Markus D Dubber (Stanford, California: Stanford Law Books, 2011.) [660 pp. Hardcover: US$90]

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Imagine gathering the views of some of the leading criminal law academics from around the world – traversing 16 countries, 6 continents, and 5 different legal systems, to be precise – by way of essays designed to provide an introductory framework for almost all of the major criminal law systems in the world to be compared and contrasted. This 660-page book is supposed to be a compelling manifestation of that imagination, and indeed is touted as a first of its kind in terms of the depth and breadth in coverage.

Since variety is the intended defining trait of the book, it is unsurprising that the sense of diversity is palpable even from a quick look at the book's contents. The states whose criminal law systems are explored include Argentina, China, India, South Africa, and the United States; the experts canvassed include Professor Andrew Ashworth (writing on the United Kingdom) and Professor Kent Roach (writing on Canada); and the systems examined include the Islamic tradition (such as Iran's), the civil tradition (such as France's), and even the International Criminal Court's (which is perhaps befittingly covered in the conclusion of the book as the realisation of moving from merely comparing approaches to consolidating approaches). The parenthetical question at this juncture, to which we will revisit shortly, is whether there is *too much* variety.

The other immediately striking feature of the book is the organisation of the material. 16 national criminal law systems translate to 16 chapters (not including the final chapter on the International Criminal Court), in which every chapter is divided into the same three sections, though the sub-sections generally differ as between chapters. Insofar as the principal purpose of the book is to identify and compare points of commonality and points of departure vis-à-vis different criminal law systems, such an organisation of the material is generally helpful (and arguably orthodox for comparative texts). Specifically, the first section of each chapter is the "Introduction", which comprises sub-sections such as a brief history of the criminal law system and the jurisdiction of the different courts in the state in question. This is followed by the section labelled the "General Part", which comprises sub-sections such as the underlying theories of punishment, the requirements for liability, and defences. The third section is the "Special Part", which basically provides illustrations of how some crimes are conceptualised and interpreted in the state in question. Homicide and offences of a sexual nature are the more common examples invoked, presumably mainly because of the universal offensiveness attached to such crimes – perhaps then, the

invitation to the reader is to read to the book to see if there is a universalised conceptualisation of, and response to, such crimes.

So much for the apparent. But does comparative analysis – which is what the book is all about – convince? What will prompt one to probe beyond the book's cover? After all, comparative courses remain a luxury, rather than a staple, in the curricula of many law schools around the world (not to mention that comparative analyses mostly take place in law schools). Perhaps chief among the possible explanations for this is the perception that the nature of such (comparative) discourse is more "academic" than "practical" or "relevant", even though comparative analyses are nothing new. At any rate, it is irrefutable that comparison in and of itself has little utility unless it serves an articulated purpose. The editors of the book thus waste no time in trying to dispel any doubt about the purpose of comparative analysis (specifically in relation to criminal law), and expound on the relevance of such an endeavour. They begin the preface/introduction as such: "The comparative analysis of criminal law can do many things for many people. For the legislator, it can be a source of possible approaches to a specific issue ... For the judge, it can suggest different solutions to tricky problems of interpretation ... The theorist can mine the vast stock of principles and rules, of structures and categories, and of questions and answers ... And the teacher, too, can draw on the positive manifestation of different, or not-so-different, approaches to particular or general questions of criminal law to challenge students' ability to ... critically analyze black-letter rules".

The purported value of comparative analysis aside, there is still the question of the specific value of the book in question – and the eventual evaluation of any book can only be measured against the claims it stakes. To this end, the editors disclaim that the purpose of the book is to provide "an encyclopaedic overview of World Criminal Law"; rather, the book is meant to "provide a diverse selection of criminal law systems designed to stimulate comparative analysis. The authors of each chapter were asked to address a common set of topics to ensure reasonable comprehensiveness and facilitate comparison among chapters ... contributors were encouraged to write the sort of essay they would like to read about an unfamiliar criminal law system. The contributors are not necessarily comparativists by trade". A cynic's response to this may be that the book simply compiles a lot of information (albeit written by experts, and along largely common topics) without expressly doing any of the comparative work for the reader, or simply assumes there are comparable elements even as between totally disparate legal traditions and criminal law systems. A possible counter-response is that the alternative of devoting chapters to topics rather than states presents its own set of problems, such as punctuated representations of each country's criminal law system. Moreover, the said alternative would have made the book the work of one or two persons, rather than

a consolidation of the views of 17 different experts.

Nevertheless, given the ambitious coverage of the book, it may be said that the anticipated reader of this book is likely to face the following scenario: strong familiarity with at least one type of criminal law system; passing knowledge of at least one more type of criminal law system; and no knowledge of the remaining criminal law system(s). This is certainly true for my case. As Singapore and India have similar criminal laws, I am not only familiar with the primary dimension of India's legal system in general (common law), but also her approach to criminal law specifically (in the main, the Penal Code and its judicial interpretations). Due to certain courses I took in law school, I possess some knowledge of the civil law tradition – so the French and German approaches to criminal law, for instance, will not be completely alien to me. Moving further down the ladder, however, I find that I have no clue what the legal system (and *a fortiori* the criminal law system) in an Islamic state, such as Iran, entails. The upshot of this variance in prior knowledge is variance in responsiveness to the material, but this is exactly what I think dovetails with the editors' intention to traverse the globe when compiling this handbook: one does not compare and contrast between the unknown and the unknown, but does so between the known and the less known, or the known and the unknown. Furthermore, by ensuring that a few states are discussed for almost every legal tradition, the comparative analysis is mostly not confined to *inter* tradition, but extends to *intra* tradition (for instance, the United States, United Kingdom, and South Africa all have significantly different common law systems). In short, returning to a question left unanswered earlier, abundant variety is a necessary approach for such a book. Whatever content that is exchanged for variety has to be seen in the light of the book's stated purpose: to be a handbook and launch-pad for comparative analysis, and not to function as a bottomless repository.

Yet a book's quality also lies in the details. Does the book excel in describing the known, the lesser-known, and the unknown to the reader? Preliminarily and purely as a matter of form, one might have thought that presenting 17 different writing styles to the reader would be a challenge, in that some might write more clearly and succinctly than the others. The reality, however, is that there is a high degree of internal consistency in the writing (or editing) style – indeed, there seems to be a very conscious attempt to achieve lucidity, which is vital for a book like this. The writing is generally crisp and, where possible, avoids undue lexicon. Each chapter is also deliberately pared down to the 30–40 page range.

In view of the above, any remaining challenge for the reader will lie in marshalling the content rather than dealing with erratic form. And also as alluded to earlier, the ease of following the material will depend on the prior knowledge of the criminal law system in question. So while reading about the criminal law

system of India (written by the ever clear Professor Stanley Yeo) is easy for me, I was expecting following the chapter on Iran to be considerably harder. This was true initially, for the very first page of that chapter was written with the presupposition that the reader has prior knowledge of some Iranian elements, such as the breakdown of the sha's regime in the Islamic Revolution (history), and the various schools such as the Shi i Dja fari (theology). But confusion swiftly turned to intrigue as I turned the pages, and this ultimately is a credit to the editors' insistence of having the same analytical structure for all the chapters in the book. After being acquainted with the brief history of Iran's criminal law system, my fascination grew as I was educated on its other aspects, such as the jurisdiction (double jeopardy does not apply), the operability of the legality principle ("the judge cannot create new legal provisions but can use authoritative Islamic sources and fatwas to interpret notions and concepts in the written law that are not explained clearly enough"), and the sources of criminal law (the "Council of Guardians has to review laws adopted by Parliament to ensure conformity to the constitution and to Islamic precepts").

This progressive acquaintance has a useful explanatory effect on subsequent parts of the chapter, such as why the Islamic Penal Code leaves many important things (such as the different types of mental state) undefined (partly because Iranian commentaries play a key role in disambiguating the Code). And after learning that the predecessor to the Code was largely influenced by the French Code Napoleon, I was naturally drawn to read the chapter on France (which, as mentioned, happens to be a jurisdiction I have some familiarity with). A random example in the form of how the two states now treat the offence of conspiracy amply illustrates the sort of intrigue I referred to in the preceding paragraph. During Napoleonic days, "a conspiracy only arose where there was a clear hierarchical structure of the criminal organization". The French later found out during the late 1800s that such an approach was "ineffective in the face of anarchic movements", and the Criminal Code was later amended to "cover more loosely organized groups". Their current approach now states that a conspiracy "consists of any group formed or understanding established with a view to the preparation, evidenced by one or more physical facts, of one or more serious offenses or one or more major offenses punishable by at least five years' imprisonment". As for Iran, "mere agreement between the conspirators is sufficient to fulfill all the elements of the crime. It is not necessary that any further action take place". The flipside of this intrigue, however, makes us return to the question of "so what do I make of this knowledge; what can I *really* do with it?" Insofar as law is conceivably seen by many as man-made and man-inspired, and insofar as there has never been any serious claim that man-made law will remain immutable forever, examining how other states imagine their laws is not a bad way to trigger our re-imaginations.

In any event, on the basis of its scope and method of coverage, *The Handbook of Comparative Criminal Law* should be judged as a pioneering work in its field, and one that provides something credible to be further built upon in the future. It should also be commended for generally steering clear of passing any normative judgment on the different practices of the different states (especially seeing how some chapters do not appear to be written by locals of the states in question), preferring instead to let the readers draw their own objective conclusions, based on objective characterisations.